

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 211 of 1997

AND

CIVIL REVISION APPLICATION No 362 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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SUJATA TYAGI MODY WD/O PINAKINBABUBHAI MODY

Versus

URMILA BABUBHAI MODY WD/O BABUBHAI MODY

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Appearance:

In C.R.A. 211/97:

MR PM RAVAL, SR. ADVOCATE for  
MR HARIN P RAVAL for Petitioner  
MR GM JOSHI for Respondents

In C.R.A. 362/98:

MR GM JOSHI for Petitioner  
MR PM RAVAL, SR.ADVOCATE for  
MR HARIN RAVAL for Respondents

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CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 16/04/98

ORAL JUDGMENT

Rule

2. Both these Revision Applications are decided by this common order.

3. The petitioner, Smt.Urmilaben Babubhai Mody, in Civil Revision Application No.362 of 1998, filed Administrative Special Civil Suit No.364 of 1993 in the Court of Civil Judge (S.D.) at Surat, interalia challenging the legality and validity of the Will executed by her deceased son. The defendant No.1, Smt.Sujata Tyagi Mody is the wife of her deceased son. By executing the Will, the deceased is alleged to have bequeathed the flat at Mumbai, to his wife Sujata, the defendant No.1 in the said civil suit.

4. During the pendency of the said suit, the defendant No.1, the petitioner in Civil Revision Application No.211 of 1997, Smt.Sujata Tyagi Mody, filed an application Ex.57 and prayed to appoint her as Receiver of the said flat, and alternatively, she prayed that she may be appointed Co-Receiver on just condition. This application was rejected on the ground that the High Court while deciding the Appeal From Order No.476/93 with Civil Application No.4715 of 1993, observed that either of the party may not be appointed as Receiver or Co-Receiver. The said order is extracted in the impugned order dated 19.9.96 passed by the 4th Joint Civil Judge (S.D.), Surat. The same is reproduced as follows:

"Heard the learned counsel for the respective parties. During the course of hearing and discussion a general consensus was arrived at between the learned counsel and it is accordingly directed that the Trial Court shall dispose of the suit as expeditiously as possible and in any case before 30/6/1994. In the meanwhile, the key of the disputed premise shall remain with the receiver and the receiver shall not hand over the key or the possession of the disputed premises to either of the parties. In view of this consensus and the directions given herein, the learned counsel for the appellant seeks permission to withdraw the present appeal. The permission is granted. The appeal stands disposed of as withdrawn. Writ to be sent to the Trial Court forthwith. Direct service is permitted."

The said order appears to have been passed on the

consensus arrived at between the parties. The parties appears to have agreed to hand over the possession of the flat to the Receiver and in that context, it was agreed that Receiver shall not hand over key or possession of the disputed premises to either of the parties. The parties had agreed not to give key or possession of the flat with reference to the Receiver. This does not preclude the Court to consider either of the party for appointment as Receiver. In view of this, the learned Judge has committed material illegality in exercise of jurisdiction in rejecting the petitioner's application only on the ground that before the High Court, the parties had agreed that the possession shall not be given to either of the parties. It is not in dispute that at present nobody is residing in the said flat. The petitioner in Civil Revision Application No.211 of 1997, Smt.Sujata Tyagi Mody, has expressed that she can earn livelihood if she can get accommodation at Mumbai. It is a family dispute, and a pragmatic approach is required to be adopted. Considering the facts and circumstances of the case, I am of the view that the petitioner, Smt.Sujata Tyagi Mody can appropriately be appointed as a Receiver of the said property. Will or no Will. Job or no job for Smt.Sujata. It cannot be lost sight that, she is none else but the widow of the owner of the flat. Of course, Smt.Urmila is also mother of the deceased. Thus, there should be no objection if either of them stays in the flat. It depends on need.

5. So far as the Civil Revision Application No.362 of 1998 is concerned, the plaintiff's application for amendment has been rejected on the ground that the application is not bonafide. Though the learned Judge, in the beginning of the order below Ex.165 has stated that simply a delay in filing the application for amendment cannot be a ground to refuse the amendment, however, tenor of the order indicates that the learned Judge has rejected the application on the same ground. In my view, it cannot be said that the plaintiff has sought amendment with a view to delay the matter. In view of this, the amendment prayed for deserves to be allowed.

6. During the course of arguments, the learned counsel Mr.G.M.Joshi has brought to my notice, a notice dated 15.4.98 issued by Ms.S.C.Srivastava, Third Joint Civil Judge (S.D.), Civil Court, Surat, whereby she has given a notice of Contempt to Urmilaben Babubhai Mody. A suo-motu notice of the said notice is taken. The format of notice indicates the name of the learned Judge on the top, i.e.:

"From:

Mrs.S.C.Srivastava,  
3rd Joint Civil Judge (S.D.)  
Surat

To:

Smt. Urmila

.... "

The format of the notice is improper. The learned Judge may refuse to grant adjournment, if the medical certificate is found to be false. The Court may pass appropriate order, but such cause does not call for Contempt notice. Considering the facts and circumstances of the case, the said notice dated 15.4.98 is taken on record, and the same is quashed.

7. In view of the aforesaid, the Civil Revision Application No.211 of 1997 is allowed and the order of the 4th Joint Civil Judge (S.D.), Surat, dated 19.9.96 is quashed and set aside. The petitioner, Smt.Sujata Tyagi Mody, wd/o. Shri Pinakin Mody is appointed as a Receiver of flat (No.203 of West View Apartments, Worli) at Mumbai. The present Receiver will hand over the possession of the said flat to her on filing of undertaking by her before the trial Court that she will not transfer or alienate the said flat and that she will also not induct any third person in the said flat. Her appointment of Receiver is subject to the rights and contentions of the parties in the main suit. Her possession on the flat as Receiver will not create any equity in her favour.

8. The Civil Revision Application No.362 of 1998 is also allowed and the impugned order dated 23.2.98 passed by the 3rd Joint Civil Judge (S.D.), Surat, is quashed and set aside. The application Ex.165 seeking amendment in the Plaint is granted. The plaintiff will carry out the amendment within a period of six weeks. On filing the amended Plaint, the defendant will be given an opportunity to file amended written statement. The order of this Court to decide the said suit on or before 30th April 1998 is vacated. However, it is expected that the trial Court will decide the same expeditiously.

9. Rule made absolute in both Civil Revision Applications.

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(sunil)